

ACNC Adviser Forum Minutes – Friday 24 March 2023

Agenda Item 1: Welcome

Anna Longley, ACNC Assistant Commissioner, General Counsel, opened the meeting with an Acknowledgement of Country.

Agenda Item 2: Commissioner's update

Sue Woodward AM, ACNC Commissioner, reflected on her first three months as Commissioner, outlining her focus on key areas that include ensuring trust and confidence, broad stakeholder engagement and opportunities for consultation, and developing and regularly communicating guidance, including through this forum. Sue also emphasized the importance of the ACNC in helping small charities who may be affected by cumulative changes in the sector.

Agenda Item 3: Member discussion

Anna Longley led a roundtable discussion on matters that impact charities and charity regulation, and how the ACNC can provide better support.

Matters raised by members included:

- [Related Party Transactions](#): charities will report from the 2023 Annual Information Statement. The ACNC will advise of the outcome of consultation on the Annual Information Statement question shortly.
- Commissioner's Interpretation Statement on Public Benevolent Institutions: this remains a priority, however we do not presently have a timeframe for release
- Harmonisation of the National Fundraising Principles: it is with states and territories to work on implementation
- The Modernising Business Registers Program and the interaction of the ACNC Charity Register
- The importance of maintaining law interpretation skills at the ACNC
- Suggestions for improving the ACNC guidance on [Charities, advocacy and the planned referendum on an Indigenous Voice to Parliament](#)
- Winding up a charity and starting a for-profit entity: noting ACNC guidance on [Wind up, merge or change legal structure](#)
- [Productivity Commission Philanthropy Inquiry](#): submissions due on 5 May
- ACNC guidance on [External Conduct Standards](#): suggestions for adding specific examples for organisations working in conflict zones
- Raising sensitive issues with the ACNC Registration team via the Registration Director

Agenda Item 4: Enhancing Charity Register Integrity

James Bennett, ACNC Director, Compliance, gave an overview of ACNC activities designed to enhance the integrity of the Charity Register. Compliance focuses on four main risk areas: safeguarding issues (particularly in the context of service providers), financial management (in particular private benefit but includes fraud and other criminal behaviour), political advocacy, and terrorism financing.

In undertaking regulatory activities, the ACNC:

- acts in accordance with the [Regulatory Approach Statement](#) - a proportionate response is considered for each compliance case which may include an educational or revocation outcome
- gathers evidence, assesses the evidence against Governance Standards and, where relevant External Conduct Standards, in consultation with the charity, issues a show cause notice if relevant, and moves to finalisation through regulatory advice, enforcement powers or revocation.
- in addressing concerns received from the public, the ACNC assesses all concerns, with decisions to commence investigations based on risk.

Agenda Item 5: Identifying compliance risks and Commission Review Program

James Bennett gave an overview of the Commission Review Program and sought input from members on future compliance topics.

Member feedback included:

- Cybersecurity and privacy issues
- Planning for and managing succession and transition in charities
- Conflict of interest where there are for-profit related parties

Members also noted the importance of the language used in undertaking compliance reviews, the ACNC assisting charities to adapt to regulatory change, and the ACNC publishing educative outcomes.

Agenda Item 6 A: Charity subtypes for hospitals

Sallyann Stonier, ACNC Director, Registration, led small group consultation with members about developing an understanding of the circumstances in which hospitals would be registered as either the Public Benevolent Institution (PBI) subtype or Health Promotion Charity (HPC) subtype. Members discussed the definition of subtypes in the context of hospitals. Most not-for-profit hospitals are likely to fall within the definition of PBI, however hospitals with a research focus, for instance, might be more appropriately registered as an HPC. The ACNC will use the feedback to inform the update to the Commissioner's Interpretation Statement on Health Promotion Charities.

Agenda Item 6 B: Reviews of Annual Financial Reports

Mel Yates, ACNC Director, Corporate Services and Reporting & Red Tape Reduction, led small group consultation on how to improve the ACNC's annual review of Annual Financial Reports. Members commented that new reporting measures can be used as an education tool to aid compliance and highlighted the importance of at least some randomisation in selecting charities for review. Member feedback was very useful in understanding what areas of risk would be most usefully reviewed to best support charities.

Agenda Item 7: Australian Accounting Standards Board

Fridrich Housa, Deputy Technical Director, Australian Accounting Standards Board (AASB), discussed the development of simplified accounting requirements for smaller Not-for-Profit Private Sector Entities and Post-implementation Reviews of not-for-profit accounting standards. Members provided valuable feedback, confirming the need for guidance on consolidation of entities, usefulness of a statement on changes in equity for entities with reserves, recognition and measurement of intangible assets and the need to address the interpretation challenges with "sufficiently specific" criterion and measurable performance obligations. Members were canvassed for their views on alternative revenue recognition approaches when considering their feedback to inform the post-implementation reviews and were encouraged to forward on the on-line surveys for the projects within the presentation to the accounting teams within charities.

Agenda Item 8: ATO – NFP Centre Update & key messages

Jennifer Moltisanti, Assistant Commissioner, Not-for-profit Centre and Government, Australian Taxation Office (ATO), gave an overview of key areas of ATO focus for NFPs and registered charities which comprise of one third of the total NFPs. Jennifer outlined the tax concessions that charities and NFPs have access to and their DGR eligibility and entitlements. She also emphasized the importance of NFPs and charities meeting their superannuation and tax obligations. Jennifer also noted emerging risks in the sector including new commercial activities that generate profit, lack of transparency and rising debt levels. NFPs can achieve high levels of assurance and compliance by keeping good records including documenting decisions and significant transactions and keeping informed of risks communicated to the market.

Agenda Item 9: Treasury update

Jacky Rowbotham, Assistant Secretary, NFP & Tax Administration Branch, Treasury provided an update on matters relevant to the charity sector, including the Treasury Laws Amendment (Refining and Improving Our Tax System) Bill 2023: transferring four DGR registers to the ATO.

Agenda Item 10: Closing remarks

Anna closed the meeting by reminding members about the Regulators Day on Friday 28 July 2023 and the Charity Law Association of Australia and New Zealand's annual conference, which is scheduled for Thursday 27 July 2023.

The next Adviser Forum meeting will take place on 11 October 2023.

Attendees:

Organisation	Representative
Add-Ministry Inc	Noel Harding
Arnold Bloch Leibler	Bridgid Cowling
Australian Audit	Robert Campbell
Australian Institute of Company Directors	Simon Mitchell
Carroll & O'Dea Lawyers	Stephanie McLuckie/Grace Brophy
Chartered Accountants Australia and New Zealand (CA ANZ)	Melanie Scott
Corney & Lind Lawyers Pty Ltd	Jessica Lipsett
CPA Australia	Ram Subramanian
Fowler Charity Law Pty Ltd	Mark Fowler
Gadens Lawyers	Biljana Apostolova
Gilbert + Tobin	Elizabeth Lathlean
Governance Institute of Australia	Charles Dane
Grant Thornton Australia Ltd	Elizabeth Lucas/Jay Vasiliou
Herbert Smith Freehills	Alice Macdougall
Hundt Law	Richard Hundt
HLB Mann Judd	Aidan Smith
Justice Connect	Amy Williams/Justin Murphy
LA Mayes Law	Lesleigh Mayes
Law Council of Australia	Seak-King Huang
Macpherson Kelley	Sarah Johnson
Maddocks	Paul Ellis
Mills Oakley	Vera Visevic

Moores	Rebecca Lambert-Smith
NFP Legal and Governance Network	Elaine Leong/Kaushik Murali
Not for Profit Accounting Specialists	Ellie Paterson
Paxton-Hall Lawyers	Paul Paxton-Hall
Platform Legal	John Altmann
Prolegis Lawyers	Anne Robinson
Saward Dawson	Peter Shields
The Tax Institute	Maria Lui
William Buck	Andrew Marks
Victorian Bar	Jennifer Batrouney AM KC
Australian Accounting Standards Board	Fridrich Housa/Claire Thomson
Australian Taxation Office	Jennifer Moltisanti
Australian Taxation Office	Joy Tillman
Australian Taxation Office	Nella DiBenedetto
Treasury	Jacky Rowbotham
Treasury	Stephen Jones

Apologies:
